



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

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Draft Advisory Opinion No. 2012-10

September 20, 2012

Question Presented: **The petitioner asks whether General Statutes § 1-86e applies to independent contractors hired by Connecticut Innovations, Incorporated, a quasi-public agency.**

Brief Answer: **No. Section 1-86e applies only to independent contractors hired by “the state,” a term that does not include a quasi-public agency, such as Connecticut Innovations, Incorporated.¹**

At its September 2012 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Scott Murphy, whose law firm, Shipman & Goodwin, LLP, acts as special counsel to Connecticut Innovations, Incorporated (“CI”). The Board issues this advisory opinion on the date shown below in accordance with General Statutes § 1-81 (a) (3).

Facts

The pertinent facts provided by the petitioner are set forth below and are considered part of this opinion:

CI is a quasi-public agency that, by its enabling act, “shall not be construed to be a department, institution or agency of the state.”

¹In light of this answer, we need not address the petitioner’s second question, which is this: “If § 1-86e applies, are CI’s independent contractors permitted to have financial interests in companies aided by the Innovation Ecosystem so long as the contractors do not use their authority under the contracts to benefit those ventures.”

General Statutes § 32-35(a). CI's statutory purposes focus on support for technological innovation and the development and growth of technology businesses offering the greatest potential for Connecticut's economy. Such support, which is provided principally in the form of investment capital, is generally targeted to emerging companies involved in research, development and commercialization of innovative technology products and services, including in the areas of information technology, bioscience, energy and environmental systems, and photonics. CI is charged with promoting the formation of "incubator facilities" for emerging businesses and with the formation of public and private partnerships to achieve those ends. See, e.g., General Statutes § 32-29 (25), (28), (29).

In conjunction with the Connecticut Department of Economic and Community Development ("DECD"), CI has undertaken to create an "Innovation Ecosystem" that will assist entrepreneurs as they start and grow emerging technology companies in the state and assist a small group of "Stage 2" companies (companies with 10 to 99 employees) to grow significantly in the state. . . . The independent contractors selected to provide the . . . infrastructure and support for the Innovation Ecosystem, and/or certain principals or employees of those independent contractors, may already be active participants in the existing support network for emerging technology companies in the state, including in some cases as investors or board members of companies that might seek support and assistance through the Innovation Ecosystem. Indeed, it is this experience and involvement, and the prospect of leveraging state dollars with further private investment, that will drive the success of the Innovation Ecosystem. . . .

CI recognizes that the selection of the companies that will participate in and receive assistance and support through the Innovation Ecosystem, and the type and amount of that assistance and support, must be grounded in the public purposes of the program and be based on established criteria in order to avoid any actual or perceived favoritism toward companies in which the independent contractors or their principals or employees may have some individual interest. CI intends therefore to institute appropriate oversight and control mechanisms to address these concerns, whether or not General

Statutes § 1-86e applies to such independent contractors. But CI nevertheless wishes to know whether it should advise the independent contractors that § 1-86e is applicable to them, and if it is, what degree of oversight and control by CI would be necessary to avoid a “misuse of authority” problem under § 1-86e in the event assistance or support through the Innovation Ecosystem is provided to companies in which such an independent contractor or its principals or employees have a financial interest. . . .

Analysis

Housed in the Code of Ethics for Public Officials (“Ethics Code”),² General Statutes § 1-86e provides a list of prohibited activities for any “person hired by *the state* as a consultant or independent contractor”³ The question here is whether CI—a “Quasi-public agency”⁴—is “the state” itself for purposes of § 1-86e. If so, then any person hired by CI (i.e., “the state”) as a consultant or an independent contractor is subject to the prohibited activities listed in that provision.

The question of whether CI is “the state” itself for purposes of § 1-86e is a matter of statutory construction, the fundamental objective of which “is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine . . . the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . .”⁵ In doing so, we are directed to look first to the statute’s text and its relationship to other statutes, and if, after doing so, “the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”⁶

Starting, as we must, with the statute’s language, § 1-86e reads:

- (a) No person hired by *the state* as a consultant or independent contractor shall:

²Chapter 10, part I, of the General Statutes.

³(Emphasis added.)

⁴General Statutes § 1-79 (l).

⁵(Internal quotation marks omitted.) *Friezo v. Friezo*, 281 Conn. 166, 181-82, 914 A.2d 533 (2007).

⁶General Statutes § 1-2z.

- (1) Use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person or a member of the immediate family of any such person or employee;
 - (2) Accept another state contract which would impair the independent judgment of the person in the performance of the existing contract; or
 - (3) Accept anything of value based on an understanding that the actions of the person on behalf of *the state* would be influenced.
- (b) No person shall give anything of value to a person hired by *the state* as a consultant or independent contractor based on an understanding that the actions of the consultant or independent contractor on behalf of *the state* would be influenced.⁷

The word “state” was left undefined in the Ethics Code, and so we turn to General Statutes § 1-1 (a), which directs that, “[i]n the construction of statutes, words . . . shall be construed according to the commonly approved usage of the language” “To ascertain the commonly approved usage of a word, we look to the dictionary definition of the term.”⁸ But as noted by one court, “[p]ublished definitions [of the word “state”] offer no guidance because the word is so broadly defined that no common definition can be held to apply.”⁹ For example, Black’s Law Dictionary (8th Ed. 1999) defines “state” as “the political system of a body of people who are politically organized”; while the American Heritage Dictionary of the English Language (New College Ed. 1981) defines it as “[o]ne of the more or less internally autonomous territorial and political units composing a federation under a sovereign government”

Nevertheless, we are also directed to consider § 1-86e’s relationship to other statutes in determining whether the legislature intended a quasi-public agency to be “the state” itself for purposes of § 1-86e.¹⁰ “[T]he legislature is always presumed to have created a harmonious and consistent

⁷(Emphasis added.)

⁸(Internal quotation marks omitted.) *Mayfield v. Goshen Volunteer Fire Co.*, 301 Conn. 739, 746, 22 A.3d 1251 (2011).

⁹*Hart v. Department of Revenue*, 16 Or. Tax 206, 212 (Or. T.C. 2000).

¹⁰See General Statutes § 1-2z.

body of law”¹¹ This requires us “to read statutes together when they relate to the same subject matter Accordingly . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction.”¹² “[T]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them.”¹³

Although the word “state” is ubiquitous in the Ethics Code (e.g., “*state* employee,” “*state* agency,” “*state* contractor”), the term “the state” appears far less frequently. And in two of its appearances, the term “the state” is expressly distinguished from the term “quasi-public agency.” The first such appearance comes in General Statutes § 1-79 (e) (5), in which “state property” is defined to include “property owned by *the state or a quasi-public agency*”¹⁴ The second comes in General Statutes § 1-79 (s), which defines “Legal defense fund” partly as follows: “a fund established for the payment of legal expenses of a public official or state employee incurred as a result of defending himself . . . in a[] . . . proceeding concerning matters related to the official’s or employee’s service or employment with *the state or a quasi-public agency*.”¹⁵

In addition, the State Ethics Commission (“Commission”) distinguished “the state” from quasi-public agencies while interpreting two other Ethics Code provisions containing that term. In Advisory Opinion No. 2002-3, it addressed General Statutes § 1-84 (i), under which “[n]o public official or state employee . . . shall enter into any contract with *the state* . . . unless the contract has been awarded through an open and public process”¹⁶ The question was whether a contract with a quasi-public agency is a contract with “the state” for purposes of § 1-84 (i).¹⁷ The Commission noted that “the legislation which established each of the Quasi-Public Agencies made it clear that they were ‘not to be construed to be a department, institution or agency of the state.’”¹⁸ On that basis, it concluded that “the §

¹¹(Internal quotation marks omitted.) *Renaissance Management Co. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 238, 915 A.2d 290 (2007).

¹²(Internal quotation marks omitted.) *Teresa T. v. Ragaglia*, 272 Conn. 734, 748, 865 A.2d 428 (2005).

¹³(Internal quotation marks omitted.) *Board of Education v. State Board of Education*, 278 Conn. 326, 334, 898 A.2d 170 (2006).

¹⁴(Emphasis added.)

¹⁵(Emphasis added.)

¹⁶(Emphasis added.) *Connecticut Law Journal*, Vol. 63, No. 32, p. 5F (February 5, 2002).

¹⁷*Id.*, p. 4F.

¹⁸*Id.*, p. 5F.

1-84 (i) open and public process for ‘any contract with the state’ does not extend to contracts entered into with Quasi-Public Agencies.”¹⁹

Roughly a decade earlier, in Advisory Opinion No. 1993-12, the Commission applied similar logic in relation to § 1-83, which requires filers of the annual statement of financial interests to list certain “leases or contracts with *the state*”²⁰ The question was “whether a contract with a Quasi-Public agency . . . is considered a contract with the state for purposes of” § 1-83.²¹ The Commission answered in the negative and gave two reasons for doing so: First, “[t]he legislation which established each of the Quasi-Public agencies made it clear that they were ‘not to be construed to be a department, institution or agency of the state.’”²² Second, when the Ethics Code was amended in 1988 to subject “officials and employees of the State’s quasi-public agencies” to its provisions, “the Legislature did not amend § 1-83 to include disclosure of contracts with the quasi-public agencies.”²³ (In other words, it did not amend § 1-83 to require filers to list, for example, “leases or contracts with the state *or a quasi-public agency*.”)

And so, we have before us (1) advisory opinions in which the Commission concluded that quasi-public agencies are not “the state” itself for purposes of two other Ethics Code provisions, (2) two provisions in the Ethics Code itself in which “the state” is expressly distinguished from a quasi-public agency, and (3) language in the enabling acts of quasi-public agencies stating that they are “not [to] be construed to be a department, institution or agency of the state.” Based on those factors, we believe that a proper reading of § 1-86e is that a quasi-public agency is not the “the state” itself for purposes of that provision. Thus we conclude, in answer to the question posed, that § 1-86e does not apply to entities hired by CI as independent contractors.

By order of the Board,

Dated _____

Chairperson

¹⁹Id.

²⁰(Emphasis added.) Connecticut Law Journal, Vol. 55, No. 2, p. 5D (July 13, 1993).

²¹Id.

²²Id.

²³Id.